No. 138, Original

In the

Supreme Court of the United States

STATE OF SOUTH CAROLINA,

Plaintiff,

v.

STATE OF NORTH CAROLINA,

Defendant.

On Motion for Leave to Intervene and File Answer

BRIEF OF THE STATE OF NORTH CAROLINA IN RESPONSE TO THE CITY OF CHARLOTTE'S MOTION FOR LEAVE TO INTERVENE AND FILE ANSWER

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INTRODUCTION

This action was brought by the State of South Carolina against the State of North Carolina, invoking this Court's original jurisdiction and alleging that interbasin transfers ("IBTs") from the Catawba basin approved by the State of North Carolina have exacerbated harms caused by drought in some locations downstream in South Carolina and have exceeded North Carolina's equitable portion of the water of the Catawba River. The City of Charlotte ("Charlotte") now seeks to intervene as a defendant, contending, *inter alia*, that Charlotte is a target of South Carolina's claims and that Charlotte's interests differ from the State of North Carolina's interests. *See* Motion for Leave to Intervene of the City of Charlotte, North Carolina and Brief in Support of Motion ("Charlotte's Motion to Intervene"), p. 10.

Charlotte clearly has a significant interest in the outcome of this case. North Carolina files this response for the limited purpose of addressing two specific statements in Charlotte's Motion to Intervene.

ARGUMENT

The State of North Carolina agrees that Charlotte is the largest municipality on the Catawba River and the largest provider of water supply and wastewater treatment services in the Catawba River basin. Accordingly, Charlotte certainly has a strong interest in the outcome of this case.

1. The State of North Carolina agrees with Charlotte that the State must represent the interests of every person that uses water from the North Carolina portion of the Catawba River basin. In fact,

the State has a particular concern for its political subdivisions, such as Charlotte, which actually operate the infrastructure to provide water to the State's citizens. N.C. Gen. Stat. § 143-355(*l*). Charlotte has been granted authority by the State to make IBTs. See N.C. Gen. Stat. § 143-215.22I (repealed August 2, 2007). The State has every reason to defend the IBTs that it has authorized for the benefit of its citizens. The State cannot agree with any implication that because it represents all of the users of water in North Carolina it cannot, or will not represent the interests of Charlotte in this litigation initiated by South Carolina.

2. North Carolina cannot agree with the suggestion that the State's actions under Section 401 of the Clean Water Act, 33 U.S.C. § 1341 ("CWA"), will somehow constrain the State from defending and securing the full range of benefits under the Comprehensive Relicensing Agreement for the Catawba-Wateree Hydroelectric Project ("CRA"). *See* Charlotte's Motion to Intervene, pp. 19-20. As reflected in CRA § 19.3, the State is authorized to issue a water quality certification, which must include conditions the State deems necessary to assure compliance with water quality standards and other requirements included within Section 401. The water quality standards and certification requirements under the CWA, however, do not impair the right or jurisdiction of the State with respect to its waters, including boundary waters, *see* 33 U.S.C. § 1370, and do not prevent the State of North Carolina from "defending and securing the full range of benefits" accruing to the State of North Carolina under the CRA. The provision of the CRA on which Charlotte

relies is only a reservation of North Carolina's right to issue a Section 401 certification and specifically negates any assertion that by entering into the CRA North Carolina has limited this statutory right. The reservation does not have any bearing on the State's willingness or ability to defend this action vigorously on behalf of all of its citizens and municipalities.

CONCLUSION

The State of North Carolina takes no position with respect to Charlotte's Motion to Intervene, except to clarify the two specific points set out in this response.

Respectfully submitted,

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